

IN SENATE OF THE UNITED STATES.

APRIL 25, 1848.

Submitted, and ordered to be printed.

Mr. UPHAM made the following

REPORT:

The Committee on Revolutionary Claims, to whom was referred House bill No. 45, entitled "An act for the relief of the heirs and legal representatives of Rignal, alias Nick Hilliary," and accompanying papers, have had the same under consideration, and report:

That the petitioners set forth in substance, that they are the surviving children and sole heirs of Rignal, alias Nick Hilliary, late of Georgetown, D. C., deceased; that their father and Mrs. Elizabeth Magruder were the only children and sole heirs of Rignal Hilliary, a lieutenant in the army of the revolution; that in the year 1830, the said Elizabeth Magruder, then of Prince George county, Maryland, induced the Secretary of War to issue a land warrant in her favor for two hundred acres of land, as the daughter and only heir at law of the said Rignal Hilliary, who was, for his military services, entitled to said land bounty; that the said Elizabeth in 1832, petitioned Congress, as the legal representative of her father, the said Rignal Hilliary, for commutation pay due him at the time of his decease, for services as an officer in the war of the revolution; that an act of Congress was passed and approved on the 25th of May, 1832, granting to her, the said Elizabeth, as the legal representative of her father, the said Rignal Hilliary, five years full pay, as the commutation of half pay for life, due him in his lifetime; that the said land warrant and act of Congress were obtained upon the false affidavits of the said Elizabeth and one Fielder Magruder; that the petitioners were under age at the time the said Elizabeth procured said land warrant and act of Congress, and wholly ignorant of her proceedings in the matter; that the said John B. Hilliary, one of the petitioners, after he arrived at lawful age, and soon as he had fully ascertained the nature of the fraud which had been committed by the said Elizabeth, consulted counsel as to what course he should pursue to recover the sums justly due him and his brother and sister, and was advised by his counsel to commence a suit against the said Elizabeth for the one half of the value of the bounty land and commutation pay; that a suit was brought, judgment recovered for the amount claimed, and a *fieri facias* issued, but that no property could be found by the sheriff

for the satisfaction of said judgment or any part thereof, and that the said Elizabeth is insolvent and wholly unable to pay the amount recovered against her as aforesaid. On looking into the evidence, the committee find that, at the November term of Prince George county court, in 1835, the said John B. Hilliary recovered a judgment against the said Elizabeth Magruder for \$2,000 damages and cost—damages to be released on payment of \$1,205 30, with interest from 29th of May, 1832, until paid; and that the said Mary Ellen Hilliary recovered a judgment against the said Elizabeth for the same sum, and to be released upon the same condition. The attorney for the petitioners states, in his affidavit, that when he commenced the aforesaid suits, and recovered said judgments, he supposed the said John B. and Mary Ellen were the only surviving children of the said Rignal, alias Nick Hilliary, and as such entitled each to one-fourth of the sum received by the said Elizabeth, which was accordingly claimed for them respectively and recovered. Upon the facts above set forth, the petitioners, in the opinion of the committee, are not entitled to the relief sought. Mrs. Magruder has received from the United States the whole sum due her father, for military services, at the time of his decease, and the petitioners, with a full knowledge of all the facts and circumstances under which the land and money had been obtained, elected to treat her as their agent or trustee, holding one half the amount she had received for their use and benefit. The inability of Mrs. Magruder to pay the sum recovered against her, gives the petitioners no just or equitable claim against the United States for the amount of their unsatisfied judgments. They were at liberty, after learning all the circumstances attending the transaction, either to ratify or repudiate the acts and doings of Mrs. Magruder. They elected to ratify them, and they are bound by that election. It is a well settled principle of the law, that a ratification of an unauthorized act, one deliberately made, upon full knowledge of all the material circumstances, becomes *eo instanti*, obligatory, and cannot afterwards be revoked or recalled. "The act is treated throughout," says Judge Story, in his Commentaries on Agency, (page 289, section 249,) "as if it were originally authorized by the principal; for the ratification relates back to the time of the inception of the transaction, and has a complete retroactive efficacy." The petitioners, therefore, are in no better condition to maintain their claim against the United States than they would have been if they had authorized the proceedings of Mrs. Magruder and lost the amount, their due, in consequence of her insolvency. But, if the committee are wrong in the view they have thus far taken of the case, there is another ground upon which they feel bound to reject the claim of the petitioners; and that is, the insufficiency of the evidence filed, in support of the claim, to show the right of Lieutenant Hilliary to commutation pay. He left the service, we think, in the summer of 1783, and died on his way home in the month of August of that year.

The committee, therefore, report the following resolution:

Resolved, That the petitioners are not entitled to the relief sought.